IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2005

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THE HONOURABLE MR.JUSTICE P.SATHASIVAM
AND
THE HONOURABLE MR.JUSTICE S.K.KRISHNAN

H.C.P.No.1273 of 2004

Valiani Mohd Shafi .. Petitioner

-Vs-

1. The State of Tamil Nadu
   rep. by the Secretary to Government
   Public (SC) Department
   Fort St.George
   Chennai 600 009

2. The Union of India
   rep. by its Secretary to Government
   Ministry of Finance
   Department of Revenue
   New Delhi

3. The Superintendent of Central Prison
   Central Prison
   Chennai .. Respondents

Petition under Article 226 of The Constitution of India, praying for the issuance of Writ of Habeas Corpus, calling for the records relating to the impugned detention order in G.O.No.SR.I/1360-2/2004 dated 8.11.2004 passed by the first respondent viz., the State of Tamil Nadu, rep. by the Secretary to Government, Public (SC) Department, Fort St.George, Chennai, quash the same and directing the respondents to produce the body of the person of the detenu Valiani Reezwan Abdul Kareem son of Abdul Kareem COFEPOSA detenu now detained in Central Prison, Chennai before this Hon'ble Court and set him at liberty forthwith.

For Petitioner :: Mr.B.Kumar
Senior Counsel for
Mr.A.Ganesh

For Respondents :: Mr.A.Kandasamy
Addl. Public Prosecutor
for R1 & R3
Mrs.Vanathi Srinivasan
ACGSC for R2

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ORDER

(Order of the Court was delivered by P.SATHASIVAM, J.)

One Valiani Mohd Shafi, brother of the detenu by name Valiani Reezwan Abdul Kareem, challenges the detention order dated 8.11.2004 detaining his brother Valiani Reezwan Abdul Kareem under Section 3(1)(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (in short "COFEPOSA Act").

2. Heard the learned Senior Counsel for the petitioner as well as the respondents.

3. Though several grounds have been raised questioning the impugned order of detention, the learned Senior Counsel appearing for the petitioner has projected the following two points as the foremost grounds:-

(1) Though the detaining authority has relied on the statement of the Joint Commissioner of Customs regarding the valuation of the watches purchased by the detenu, the copy of the statement has not been furnished. Inasmuch as the same being a vital document and relied on by the detaining authority, non-supply of the same vitiates the detention order.

(2) Inasmuch as the detaining authority has considered many extraneous materials while passing the order of detention, the impugned detention order is liable to be quashed. In support of the said contention, he relied upon a Division Bench decision of this Court in "ELANGOVAN v. THE DISTRICT MAGISTRATE AND DISTRICT COLLECTOR, DHARMAPURI & ANOTHER (1996-2-L.W.(Crl.) 680)".

4. On the other hand, the learned Additional Public Prosecutor, by taking us through the relevant materials available from the paper-book supplied to the detenu, would contend that the valuation and the procedures followed are as envisaged under Rule 8 of the Customs Valuation (Determination of Price for imported goods) Rules, 1988 and hence the detaining authority is well within his power in passing the order of detention. He also contended that the detaining authority has relied only on the relevant materials and those materials were supplied to the detenu. Hence, there is no substance in the argument of the learned Senior Counsel for the petitioner.

5. We have carefully considered the relevant materials and the rival contentions.

6. With regard to the first contention raised by the learned Senior Counsel for the petitioner, it is relevant to note that it is the specific claim of the detenu that the valuation of the watches he had purchased is for Rs.3,29,418/=. The same is available in the valuation petition filed before the Court. In support of his claim he

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had also produced the purchase bills for Rs.3,29,418/=. On the other hand, the Customs Department valued five watches as Rs.7,52,125/=. In paragraph 1(viii) of the grounds of detention, it is stated that the Customs Department has not filed a counter in the valuation petition filed by the detenu. However, there is a reference to the statement of the Joint Commissioner of Customs stating that the valuation has been adopted in conformity with the valuation procedures as envisaged under Rule 8 of Customs Valuation (Determination of Price for imported goods) Rules, 1988. The perusal of the relevant materials as well as the details furnished in the said paragraph would make it clear that the valuation of the watches is a relevant factor for consideration, as rightly contended by the learned Senior Counsel for petitioner. We have already referred to the claim of the detenu namely, that the valuation of watches is Rs.3,29,418/=, whereas the value, according to the Customs, is Rs.7,52,125/=. In such circumstances and in the light of the said dispute, having relied on the information/statement furnished by the Joint Commissioner of Customs stating that the value has been adopted in conformity with the valuation procedures as envisaged under Rule 8 of the Rules, it is clear that the detaining authority has relied on the information furnished by the said officer namely, the Joint Commissioner of Customs. Accordingly, it is, but, proper to supply a copy of the said decision to the detenu in order to make an effective representation with regard to his detention. Failure to supply the same vitiates the detention order.

7. Coming to the second contention based on certain details stated in paragraph 1(ix) of the grounds of detention, the learned Senior Counsel appearing for the petitioner, after taking us through the reply dated 3.11.2004 sent to Mr.A.Ganesh, Advocate of the detenue pursuant to his letter dated 26.10.2004, would submit that in addition to the information stated therein, the detaining authority has considered several extraneous materials while passing the order of detention. In the light of the said contention, we have perused the letter dated 26.10.2004 of Mr.A.Ganesh, Advocate of the detenu, the reply dated 3.11.2004 of the Officer, the Commissioner of Customs, Chennai Airport, Customs House as well as the particulars mentioned in paragraph 1(ix) of the grounds of detention. On going through those materials/statements, we are satisfied that the detaining authority has referred to several extraneous materials while passing the order of detention. In this regard, it is useful to refer to the Division Bench decision of this Court in "ELANGOVAN v. THE DISTRICT MAGISTRATE AND DISTRICT COLLECTOR, DHARMAPURI & ANOTHER (1996-2-L.W.(Crl.) 680)". In the grounds of detention in that case, the detaining authority has stated that the medical officer concerned has stated, among other things, that excess consumption of arrack mixed with atrophine would cause death. It is further stated that the statement of the medical officer does not indicate the same. Hence, the

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Division Bench arrived at a conclusion that the extraneous material, not supplied to the detenu, stood relied upon. After satisfying themselves that extraneous material which was not supplied to the detenu and duly relied upon would enure in favour of the detenu, quashed the order of detention. In our case, as discussed earlier, in the grounds of detention the detaining authority has considered and relied on several extraneous materials while passing the order of detention. As observed by the Division Bench in the above cited decision, in the absence of supply of those materials to the detenu or to his Advocate in the reply sent to him, the impugned order of detention is liable to be set aside.

8. Under these circumstances, the impugned order of detention dated 8.11.2004 passed by the first respondent is set aside. The detenu namely, Valiani Reezwan Abdul Kareem is directed to be set at liberty forthwith, unless his detention is required in any other case. The habeas corpus petition is allowed. Consequently, H.C.M.P.No.9 of 2005 is closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ss
To

1. The Secretary to Government of Tamil Nadu
   Public (SC) Department
   Fort St.George
   Chennai 600 009

2. The Secretary to Union of India
   Ministry of Finance
   Department of Revenue
   New Delhi
3. The Superintendent
   Central Prison
   Chennai
   (in duplicate for communication to detenu)

4. The Joint Secretary to the
   Government of Tamil Nadu
   Public (Law and Order) Department
   Fort St. George
   Chennai 600 009

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5. The Public Prosecutor
   High Court
   Chennai 600 104

+1cc to Mr. Vanathi Srinivasan,Advocate No.16449

+1cc to M/S A.Ganesh Advocate Sr.No.15991

AK(CO)
kaa 7.4.

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